

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-149154-06

Date:

January 22, 2007

Purchaser =

Foreign Target =

Foreign Target Subsidiary =

Foreign DE =

Seller =

LLC1 =

LLC2 =

LLC3 =

State X =

Country Y =

Date A =

Date B =

Company Official =

Tax Professionals =

Dear :

This letter responds to a letter dated October 4, 2006, submitted on behalf of Purchaser, requesting an extension of time under §§301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser is requesting an extension to file a “§338 election” under §338(g) (sometimes hereinafter referred to as the “Election”) with respect to Purchaser’s acquisition of the stock of Foreign Target and the deemed acquisition of Foreign Target Subsidiary on Date A. The material information is summarized below.

Purchaser is a State X corporation. Seller, a State X corporation, owns all the interests in LLC1. LLC1 owns all the interests in LLC2, which owns all the interests in LLC3, which owns all the stock of Foreign Target. LLC1, LLC2, and LLC3 are State X limited liability companies that have elected to be disregarded as entities separate from their owner for Federal income tax purposes. Foreign Target indirectly owns all the stock of Foreign Target Subsidiary, through Foreign DE, which elected to be disregarded as an entity separate from its owner for Federal tax purposes. It is represented that Foreign Target and Foreign Target Subsidiary were neither passive foreign investment companies nor foreign personal holding companies at any time during the portion of their taxable year that ended on the acquisition date (as defined in §338(h)(2)). Foreign Target and Foreign Target Subsidiary are controlled foreign corporations.

On Date A, pursuant to a purchase agreement of the same date, Purchaser acquired all the interests in LLC1 including all of the interests in LLC2, LLC3 and all the

stock of Foreign Target and Foreign Target Subsidiary from Seller for cash. It is represented that Purchaser's acquisition of the stock of the Foreign Target qualified as a "qualified stock purchase," as defined in §338(d)(3).

Purchaser intended to file the Election. The Election was due on Date B. However, for various reasons a valid election was not filed. Accordingly, this request was submitted, under §301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under §6501(a) has not expired for Purchaser's, Foreign Target's, or Foreign Target Subsidiary's taxable years in which the acquisition occurred, the taxable years in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a "§338 election" or a "§338(h)(10) election"; and (2) the acquisition is a "qualified stock purchase."

Under §301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interest of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., §1.338-2(d)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Purchaser to file the Election, provided Purchaser acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Purchaser, Company Official, and Tax Professionals explain the circumstances surrounding the failure to file the Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service and that the interests of the government will not be prejudiced if relief is granted. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Purchaser has shown it acted reasonably and in good faith, the requirements of §§301.9100-1 through 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under §301.9100-1, until 45 days from the date on this letter, for Purchaser to file the Election with respect to the acquisition of the stock of Foreign Target and the deemed acquisition of Foreign Target Subsidiary, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Purchaser must file the Election on Form 8023, in accordance with §1.338-2(d) and the instructions to the form. A copy of this letter must be attached to Form 8023.

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transaction as a §338 transaction for the taxable year in which the transaction was consummated (and for any other affected taxable year). A copy of this letter and a copy of Form 8883 must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy the requirement of attaching a copy of this letter by attaching a statement to their return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the taxpayers' (Purchaser's, Foreign Target's, and Foreign Target Subsidiary's) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to: (1) whether the acquisition of the Foreign Target stock qualifies as a "qualified stock purchase" under §338(d)(3); or (2) any other tax consequences arising from the Election.

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing as the time or, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under §301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

This letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)